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NO. 02-330

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2002

JONATHON WALLS,
Petitioner,

-vs-

PATRICK WRIGHT,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner Patrick Wright seeks leave to proceed *in forma pauperis*. Petitioner was granted leave to so proceed in both the U.S. District Court and the U.S. Court of Appeals and counsel was appointed for Petitioner under the Criminal Justice Act of 1964, 18 U.S.C. Sec. 3006. Consequently, pursuant to Rule 39.1, no affidavit is attached.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

In determining whether to sentence Respondent, Patrick Wright, to death, the state sentencing judge reviewed evidence Respondent had offered as mitigation of his abused and traumatic background, and was obviously moved by it, stating

> I don't think any reasonable person who has heard all of the evidence in this case can feel anything but sympathy for the pathetic creature, Patrick Wright, who has been paraded through the courtroom in the trial of this case. He is a man who has wandered the forty wretched years of his life from institution to institution, from prison to prison; the evidence indicating that his fetish for women's shoes being perhaps the one and only purpose for his life.

Transcript of Proceedings From the State Court Trial and Sentencing Hearing, Vol. 18, pp.6-7. The judge, however, believed he was prevented from considering that evidence, stating "sympathy for the defendant is not an appropriate consideration at this point." *Id.* at 7. The judge went on to state

> To repeat in part, *any matters dealing with sympathy*, outrage, who the victim was, *all the matters that I just mentioned* have no bearing on whether the defendant shall receive the death penalty. And again, I note for the record that I have cited them so the record is clear that I have rejected them, and *I have disregarded them in making my decision*.

Id. (Emphasis added).

To the extent there was any ambiguity regarding what was meant by the judge's statements that "any matters dealing with sympathy, outrage, who the victim was, all the matters that I just mentioned have no bearing on whether the defendant shall receive the death penalty," and "I have disregarded them in making my decision," that ambiguity was cleared up when the judge described the weighing process he engaged in to determine whether to sentence Respondent to death. Specifically, Illinois law required the judge to determine whether there

were no mitigating factors sufficient to preclude the imposition of the death sentence. Ill. Rev. Stat. ch. 38, Section 9-1(h) (1983). The judge, in explaining his decision, first carefully described the evidence of mitigating factors that he was considering in the weighing process, concluding that the only mitigating factor he could find to weigh against the aggravating factors was the statutory mitigating factor that the crime was committed while defendant suffered from extreme mental or emotional disturbance. *Id.* at 8-10. The judge then carefully described the aggravating factors he considered in the weighing process.

Conspicuously absent from the judge's description of aggravating and mitigating factors was any mention of the evidence of Respondent's abused and traumatic childhood that had been introduced, the very evidence "dealing with sympathy . . . that [the judge] just mentioned" and specifically "disregarded," and which the judge stated would "have no bearing on whether the defendant shall receive the death penalty." This was no mere oversight, as the judge specifically stated he had "given great consideration to whether other mitigating factors exist . . . [and was] unable to determine the existence of any mitigating factors within or without the statute with the exception of paragraph 2 [extreme mental or emotional disturbance at the time of the crime] that I have noted." *Id.* at 10.

After reviewing the entirety of the sentencing judge's statement, the Seventh Circuit concluded that, "[b]ecause the sentencing court's statements reflect the wholesale exclusion of evidence offered by Wright in mitigation, we conclude with constitutionally grounded certainty that Wright did not receive the individualized sentence as mandated by *Eddings*." *Wright v. Walls*, 288 F.3d 937, 946 (7th Cir. 2002). The Seventh Circuit agreed with the District Court that "[t]o find from these statements that the sentencing judge actually considered Wright's requires

'tortuous reasoning.'" *Id.* at 944, *quoting Wright v. Cowan*, 149 F. Supp. 523, 538 (C.D. Ill. 2001). Judge Easterbrook dissented. *Wright*, 288 F.3d at 947 (Easterbrook, J., dissenting).

ARGUMENT AS TO WHY *CERTIORARI* SHOULD BE DENIED

The issue in this pre-Antiterrorism and Effective Death Penalty Act ("AEDPA") case is strictly a factual one: whether statements made by the state sentencing judge at the1983 capital sentencing hearing demonstrate that the judge excluded from consideration evidence of Respondent traumatic childhood that was offered in mitigation in violation of *Eddings v. Oklahoma*, 455 U.S. 104 (1982). As described above, after carefully considering the entirety of the state sentencing judge's comments, both the District Court and the Circuit Court correctly found that the judge had in fact excluded that evidence from consideration. Petitioner, Jonathon Walls, seeks *certiorari* because he disagrees with the District Court's and the Circuit Court's factual conclusions. It is not appropriate for this Court to grant *certiorari* to delve into this factual thicket, particularly since both the District and the Circuit Court came to the same conclusion. *See Kyles v. Whitely*, 514 U.S. 419, 456-57 (1995) (Scalia, J., dissenting) (The policy against granting *certiorari* to resolve factual disputes "has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires"); *see also Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275 (1949); *U.S. v. Johnston*, 268 U.S. 220, 227 (1925).

Perhaps in recognition of the reality that this Court is unlikely to grant *certiorari* to address a factual issue whose resolution would have no impact beyond the unique facts of this pre-AEDPA case, Petitioner in his second "Question Presented" manufactures a nonexistent issue: "Whether the court of appeals' holding that *Eddings* requires an express statement of

compliance creates a new rule of law on collateral review in violation of *Teague v. Lane*, 489 U.S. 288 (1989) and *Saffle v. Parks*, 494 U.S. 484 (1990)?" Petitioner for Writ of Certiorari at i. This is a nonexistent issue because the court of appeals in this case made no such holding. Instead, that court, like the District Court before it, applied *Eddings* in a straightforward fashion to simply hold that, "[b]ecause the sentencing court's statements reflect the wholesale exclusion of evidence offered by Wright in mitigation, we conclude with constitutionally grounded certainty that Wright did not receive the individualized sentence as mandated by *Eddings*." *Wright*, 288 F.3d at 946. Clearly, this Court should not grant *certiorari* to address such a nonexistent issue.

Petitioner also argues that the Seventh Circuit and the District Court failed to afford sufficient deference to the Illinois Supreme Court's decision on this point, in violation of *Parker v. Dugger*, 498 U.S. 308 (1991). Petition for Writ of Certiorari at 15-16. As an initial matter, it is important to point out that Petitioner failed to raise this argument in its briefs before the Seventh Circuit and in District Court below. Moreover, as the Seventh Circuit explained, deference is only due a state court factual finding that is "fairly supported by the record." Specifically, *Parker*, as the Seventh Circuit explained,

> involved a capital sentencing judge who weighed aggravating and mitigating factors pursuant to Florida law. On appeal, the Florida Supreme Court held that the judge had erroneously relied upon two aggravating factors. However, rather than remanding the case for resentencing, the Florida Supreme Court held that the absence of any nonstatutory mitigating factors made re-weighing unnecessary and affirmed the death sentence. The Supreme Court of the United States ultimately reversed, finding that the "Florida Supreme Court erred in its characterization of the trial judge's findings, and consequently erred in its review of Parker's sentence. *Id.* at 318. *Parker* instructs appellate courts to review the entire record when evaluating a sentencing judge's comments: accurate factual characterization depends upon "an examination of the transcript of the trial and sentencing hearing, and the sentencing order." *Id.* at 320. The

> Supreme Court ultimately reversed because the Florida Supreme Court disregarded evidence that contradicted its factual finding. "What the Florida Supreme Court could not do, but what it did, was to ignore the evidence of mitigating circumstances in the record and misread the trial judge's findings regarding mitigating circumstances, and affirm the sentence based on a mischaracterization of the trial judge's findings." *Id*

Wright, 288 F.3d at 945. *Parker* is relevant to this case, Petitioner argues, because the Illinois Supreme Court concluded that, because the State had asked the sentencing judge to consider all of the evidence that had been introduced at trial and the sentencing judge found that Respondent had established the statutory mitigating factor of "extreme mental or emotional disturbance at the time of the crime," the sentencing judge necessarily considered the evidence that had been introduced of Respondent's traumatic childhood. *See People v. Wright*, 111 Ill.2d 128 (1985).

The Seventh Circuit, in addressing the Illinois Supreme Court's conclusion, observed that "[t]he fact that the State requested the sentencer to take into account all of the evidence presented at trial is immaterial when coupled with the specific evidence the sentencing court stated he would disregard." *Wright*, 288 F.3d at 946. The Seventh Circuit further noted that, "[t]o suggest that the finding of extreme mental and emotional mental disturbance at the time of the crime necessarily encompassed the evidence of Wright's pitiful life renders the words 'at the time of the crime' meaningless." *Id*. at 943; *see also People v. Wilson*, 191 Ill.2d 363, 374 (2000); *Wright*, 111 Ill.2d at 169 (Clark, CJ., dissenting). Finally, the Seventh Circuit explained that, in evaluating whether the sentencing judge considered the evidence of Respondent's traumatic childhood, the Illinois Supreme Court did not even address the very comments made by the sentencing judge regarding the evidence that the sentencing judge said he would not be considering. *Wright*, 288 F.3d at 942, 944-45. Because "the Illinois Supreme Court did not address the sentencing judge's comments, but instead relied exclusively on the finding of one

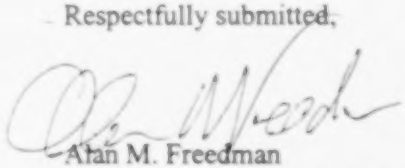
mitigating factor and the fact that the government asked the court to evaluate all of the evidence produced at trial," the Seventh Circuit correctly concluded that the Illinois Supreme Court's conclusion--like the Florida Supreme Court's decision in *Parker*--was not fairly supported by the record. *Id.* at 945; *see also id.*("Not considering the trial court's comments in this case is tantamount to not considering the evidence of nonstatutory mitigating circumstances in *Parker*").

The Seventh Circuit's analysis was clearly correct. In any event, it would be inappropriate for this Court to grant *certiorari* to consider Petitioner's contention that the Seventh Circuit erred in making this factual determination, particularly because this Court's resolution of that issue would have little impact beyond the specific facts of this case.

CONCLUSION

For the reasons described above, the Seventh Circuit's decision in this pre-AEDPA case was correct and it would be inappropriate for this Court to grant *certiorari* to address the factual disputes and non-existent issues raised in the Petition for Writ of Certiorari. Accordingly, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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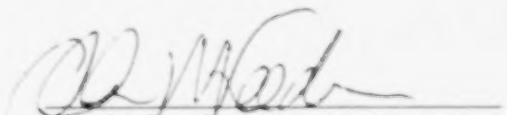
CERTIFICATE OF SERVICE

I, Alan M. Freedman, certify that I served copies of Petitioner's Motion to Proceed In Forma Pauperis, and Brief in Opposition to Petition for Writ of Certiorari by first class mail, postage prepaid, on October 2, 2002, addressed to:

Colleen M. Griffin
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601



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